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No. 08 – 0702

Supreme Court, U.S.
FILED
FEB 2 - 2009
OFFICE OF THE CLERK

In The
Supreme Court of the United States

DOM WADHWA, M.D., *pro se*
Petitioner,

v.

MERIT SYSTEMS PROTECTION BOARD,
Respondent.

GREGORY G. GARRE, Esquire,
United States Solicitor General
JEFFREY A. GAUGER, Esquire,
Attorney for the Respondent
B. CHAD BUNGARD, Esquire,
Attorney for the Respondent
CALVIN M. MORROW, Esquire,
Attorney for the Respondent

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Federal Circuit

PETITIONER'S REQUEST FOR A REHEARING

DOM WADHWA, M.D., *pro se*
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SUPREME COURT OF THE UNITED STATES
1 First Street, N.E.
Washington, DC 20543

No. 08 - 0702, filed November 26, 2008

CERTIFICATION OF COUNSEL

U.S. Court of Appeals for the Federal Circuit
No. 2008, 3176-3177

DOM WADHWA, M.D., *pro se*
Petitioner

v.

Merit Systems Protection Board,
Respondent

I, Dom Wadhwa, M.D., *pro se*, a party unrepresented by counsel, hereby present my petition for rehearing of the above-entitled case in good faith and not for delay.

This petition distinctly states its grounds that are limited to other substantial grounds not previously presented and is accompanied by this certificate.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 14, 2009

Dom Wadhwa MD

Dom Wadhwa, M.D., *pro se*
Petitioner

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PETITIONER'S REQUEST FOR A REHEARING ON PETITION FOR A WRIT OF CERTIORARI

Introduction

I, Petitioner, Dom Wadhwa, M.D., *pro se*, ("Dr. Wadhwa") in the above-captioned Petitioner's Request For A Rehearing on Petition For A Writ Of Certiorari, Case No. 08-0702, respectfully files a motion with this Honorable Court for a rehearing (Court Rule Number 44) of the Court Order that was entered on January 12, 2009.[1]

Facts

The following facts should be taken into consideration:

1. The January 12, 2009 letter from the Clerk of the Court did not offer me an explanation for issuance of the court order

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[1] On January 12, 2009, William K. Suter, Clerk of the Court for the Supreme Court of the United States, issued a letter to Petitioner which states, "The Court today entered the following order in the above entitled case (Dom Wadhwa v. Merit Systems Protection Board, No. 08-0702): The petition for a writ of certiorari is denied."

that denied my petition for a writ of certiorari. **(Exhibit A)**

2. The Agency officials, with the help of their attorneys, have been successful in using their authority to dismiss my case in the lower courts without providing a shred of evidence to back up their argument.

Denying my petition for a writ of certiorari allows individuals with authority not to be held accountable for their actions.

3. I have been subjected to relentless, ongoing harassment in the workplace at the Philadelphia VA Medical Center ("PVAMC"), despite no wrongdoing whatsoever on my part.

John Murphy, M.D., Director of Primary Care and my first level supervisor, Michael Grippi, M.D., former Chief of Medicine and my second level supervisor, Margaret O'Shea-Caplan, Associate Medical Center Director, and Kathleen Craige, R.N., Nurse Manager at PVAMC, have made a concerted effort to subject me to this workplace harassment.

Denying my petition for a writ of certiorari allows these individuals with authority not to be held accountable for their actions, despite no wrongdoing whatsoever on my part.

4. Drs. Murphy and Grippi, Ms. O'Shea-Caplan, and Ms. Craige have brought false charges against me, for my alleged professional misconduct and for my alleged clinical incompetence, while I was exercising my civil rights under the Civil Rights Act of 1964.

Denying my petition for a writ of certiorari will allow the Agency officials at PVAMC not to be held accountable for misuse of authority for their prohibited personnel practices and this will allow them to continue to misuse their authority with other innocent individuals such as myself.

5. Drs. Murphy and Grippi, Ms. O'Shea-Caplan, and Ms. Craige have denied me my rightful access, under the Freedom of Information Act (FOIA)/Privacy Act, to the false documents related to the false charges brought against me for my alleged professional misconduct and my alleged clinical incompetence.

Denying my petition for a writ of certiorari will not hold these Agency officials, and other Agency officials at PVAMC, accountable for utilizing false documents against employees to humiliate and harass innocent victims such as myself.

4. There were several issues that were raised by Respondents for the Government, Jeffrey A. Gauger, Esquire, B. Chad Bungard, Esquire, and Calvin M. Morrow, Esquire, that are *inaccurate* and based on false information provided to them by Drs. Murphy and Grippi, Ms. O'Shea-Caplan, and Ms. Craige, Agency officials at PVAMC. Oral argument would have revealed the true facts in my case.

I was denied the opportunity by oral argument under oath to challenge these three attorneys, regarding the flawed motion they produced in order to dismiss my case at the lower level.

5. Furthermore, on July 26, 2006, three days after I had contacted the VA Office of the Inspector General (IG) regarding the unsafe working conditions in the Outpatient Primary Care Clinics at PVAMC, Dr. Murphy proposed a major disciplinary action against me of a Fourteen (14) Day Suspension for an alleged violation of the *Privacy Act*, which I did not, in fact, violate.

6. On August 30, 2006, eight days after the VA IG's Office notified Dr. Grippi of my protected disclosure, he rescinded Dr. Murphy's proposed Fourteen (14) Day Suspension and he (Dr. Grippi) issued a proposed Removal of me from my over twenty-two year employment with the VA for

the same *alleged* violation of the *Privacy Act*, which I did not, in fact, violate.

7. Significantly, the Agency officials at PVAMC refused to provide me with any evidence to support their proposed removal disciplinary action that I required to provide an adequate response to it. Rather, the Agency officials at PVAMC demanded both my oral and my written responses to this proposed major disciplinary action in less than eight days. [2]

Ultimately, the Agency officials at PVAMC have refused to pr vide me with the necessary documents essential for me to prove my innocence. I assert that the Agency officials do not have *any* documents *whatsoever* to back up their false charges against me and, therefore, they have steadfastly refused to provide these documents to me.

8. On August 30, 2006, I filed a formal complaint regarding the proposed removal disciplinary action issued to me by Dr. Grippi, Agency Case No. 2003-0642-2006103240. On September 15, 2006, the VA Office of Resolution Management (ORM)

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[2] Please note: The proposed removal disciplinary action was mitigated to a reprimand based not on conduct or performance and was issued to me on April 3, 2007. The Agency officials at PVAMC refused to offer me any explanation for this reprimand.

sent a letter acknowledging receipt of Agency Case No. 2003-0642-2006103240, filed on August 30, 2006. This Agency Case was never investigated by ORM. The Agency issued a Final Agency Decision for this EEO case in October 2006, allegedly based on my "failure to state a claim."

9. On October 15, 2006, I involuntarily transferred from PVAMC to the VA Northern Indiana Health Care System ("NIHCS"), where I was placed on administrative leave for *false charges* of alleged professional misconduct and alleged clinical incompetence at PVAMC, after only three workdays of employment at NIHCS.

10. . On December 19, 2006, William F. Feeley, VA Deputy Under Secretary for Health for Operations and Management, issued a Directed Reassignment Order for my return from NIHCS to PVAMC for my alleged professional misconduct and for my alleged clinical incompetence at PVAMC, prior to my transfer to NIHCS in October 2006.

It should be noted that in December 2006, Mr. Feeley **assumed** that the information provided to him about me by Drs. Murphy and Grippi and by Joseph Pomorski and by Nevin Weaver, two Agency officials at VA Central Office, was factual and truthful regarding my alleged professional

misconduct and my alleged clinical incompetence at PVAMC, prior to my transfer to NIHCS in October 2006.

Based on this assumption, Mr. Feeley issued the Directed Reassignment Order. Two months later, in February 2007, I was informed by Mr. Pomorski that Mr. Feeley's *Directed Reassignment Order was not due to my conduct or performance* at PVAMC. These conflicting statements by Mr. Pomorski in December 2006 and in February 2007 regarding my Directed Reassignment Order avoid the employment contract, avoid RIF (reduction-in-force) procedures and safeguards, and avoid appeal rights.

Also, it was assumed by Mr. Feeley that the Agency officials at PVAMC who issued the proposed removal disciplinary action against me had acted in good faith.

On the contrary, on August 30, 2006, Drs. Murphy and Grippi, Ms. O'Shea-Caplan, and Ms. Craige misused their administrative authority and used false documents to propose a major disciplinary action of removal from my over twenty-two year VA employment, for absolutely no wrongdoing on my part.

11. I have exhausted all administrative remedies prior to filing a petition for a writ of certiorari with this Honorable Court.

Exhaustion of administrative remedies is not a jurisdictional requirement, but rather a judicially created prudential requirement. It should be noted that I had made several attempts with my immediate supervisors and with the Agency officials at PVAMC to obtain the documents they had created in order to bring false charges of alleged professional misconduct and of alleged clinical incompetence against me.

Also, I contacted Agency officials at VA Central Office in Washington, D.C., to obtain this information. I was informed by the Agency officials at VA Central Office that my concerns were a local issue and that I would have to obtain the necessary documents from the Agency officials at PVAMC.

ARGUMENT

Erroneous Interpretation of Law, Regulation or Material Fact, or Misapplication of Established Policy

The United States Court of Appeals for the Federal Circuit erred by dismissing my claims against the Agency. The three attorneys for the Agency grossly distorted the law which resulted in an emasculation of my well-founded claims.

Charges made by the Agency officials at PVAMC of *alleged professional misconduct* and of *alleged clinical incompetence* by me as isolated incidents alone would not constitute discriminatory retaliatory harassment. However, when these charges are repetitive and they are on an ongoing basis, then they constitute acts of *reprisal* by the Agency for my previous and ongoing EEO activities, and constitute a hostile work environment.

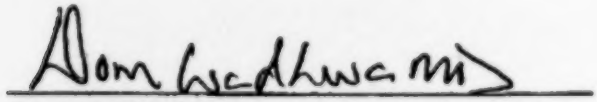
I have suffered injuries from these discriminatory acts of harassment. The Agency's refusal to address my legitimate and well-founded discrimination complaints as clear evidence of severe retaliatory or pervasive harassment and a hostile work environment has resulted in a *de facto* determination that I have not been subjected to harassment.

Conclusion

In summary, denial of my petition for a writ of certiorari implies that it is acceptable for individuals with administrative authority to misuse their power and, as a direct result, they will not be held accountable for their actions.

Therefore, I am respectfully filing Petitioner's Request For A Rehearing On Petition For A Writ Of Certiorari with this Honorable Court.

Respectfully submitted,



Dom Wadhwa, M.D., *pro se*
Petitioner

Dated: February 4, 2009

Petitioner's Home Address:
215 E Camden Avenue, H-13
Moorestown, NJ 08057
Telephone: (609) 220-2771 (cell)
email: dom.wadhwa@va.gov

Exhibit A

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

William K. Suter
Clerk of the Court
(202) 479-3011

January 12, 2009

Dr. Dom Wadhwa
215 E. Camden Avenue
H-13
Moorestown, NJ 08057

Re: Dom Wadhwa
v. Merit Systems Protection Board
No. 08-702

Dear Dr. Wadhwa:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,

sd/
William K. Suter, Clerk

SUPREME COURT OF THE UNITED STATES
1 First Street, N.E.
Washington, DC 20543

No. 08 - 0702, filed November 26, 2008

CERTIFICATE OF COMPLIANCE

U.S. Court of Appeals for the Federal Circuit
No. 2008, 3176-3177

DOM WADHWA, M.D., *pro se*
Petitioner

v.

Merit Systems Protection Board,
Respondent

As required by Supreme Court Rule 33.1(h), I certify that *Petitioner's Request For A Rehearing On Petition For A Writ Of Certiorari* to the Supreme Court Of The United States contains 1,790 words, excluding the parts of the brief that are exempted by Supreme Court Rule 33.1 (d).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 4, 2009

Dom Wadhwa, M.D., *pro se*
Petitioner

SUPREME COURT OF THE UNITED STATES
1 First Street, N.E.
Washington, DC 20543

DOM WADHWA, M.D.,
Petitioner *(pro se)*

v.

Merit Systems Protection Board,
Respondent

Docket No.
08-0702
Filed:
November 26, 2008

CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies (*three copies*) of the foregoing *Petitioner's Request For A Rehearing On Petition For A Writ Of Certiorari* to the Supreme Court Of The United States in the above matter were sent by first class mail, this date, to:

Solicitor General of the United States
Department of Justice
Room 5614
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001
Telephone: (202) 514-2203

Dom Wadhwa MD

Dom Wadhwa, M.D., *pro se*
Petitioner

Dated: February 4, 2009

SUPREME COURT OF THE UNITED STATES
1 First Street, N.E.
Washington, DC 20543

DOM WADHWA, M.D.,
Petitioner *(pro se)*

v.

Merit Systems Protection Board,
Respondent

Docket No.
08-0702
Filed:
November 26, 2008

CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of the foregoing *Petitioner's Request For A Rehearing On Petition For A Writ Of Certiorari* to the Supreme Court Of The United States in the above matter were served upon the following by first class mail, this date, to:

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Dom Wadhwa MD

Dom Wadhwa, M.D., *pro se*
Petitioner

Dated: February 4, 2009